

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 13-92

LUCINA DURKIN (In representation )  
of School Bus Drivers), )  
AMALGAMATED TRANSIT UNION #381, )

Complainant, )

vs. )

BUTTE SCHOOL DISTRICT #1, )

Defendant. )

RECOMMENDED

ORDER

\* \* \* \* \*

I. BACKGROUND AND DISCUSSION

This matter comes on as a result of charges filed on October 9, 1991, alleging a violation of 39-31-401(5) MCA. The charges allege that the Butte School District unilaterally changed working conditions by contracting out charter work. The charge has been denied by the District. The District has also requested that the complaint be dismissed as the matter is already subject to the contract grievance procedure and final and binding arbitration.

Pursuant to 39-31-405 (1) the undersigned was appointed to investigate the charge. The investigation has revealed that the Complainant has filed a grievance and that the parties have agreed to submit the dispute as to whether there was a violation of the agreement to the grievance/arbitration procedure. It is conceivable that a resolution of the contract dispute will also decidewhether the Defendant committed an unfair labor practice.

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2 In ULP 43-81, William Converse v Anaconda Deer Lodge County  
3 and ULP 44-81, James Forsman v Anaconda Deer Lodge County, the  
4 Board of Personnel Appeals adopted National Labor Relations Board  
5 precedent as set forth in Collyer Insulated Wire, 192 NLRB 387,  
6 77 LRRM 1931, deferring certain unfair labor practice proceedings  
7 to an existing negotiated grievance/arbitration procedure. In so  
8 doing the Board removed a possible source of conflict between the  
9 Board of Personnel Appeals and the dispute resolution mechanism  
10 contained within the parties' collective bargaining agreement.  
11 Such a removal is in the best interest of the Board and the  
12 collective bargaining process.

13  
14 II. RECOMMENDED ORDER

15 Unfair Labor Practice Charge 7-92 is dismissed without  
16 prejudice to any party and without deciding the merits of the  
17 charge. The Board of Personnel Appeals retains jurisdiction over  
18 this matter for the purpose of entertaining an appropriate and  
19 timely motion for further consideration upon a proper showing  
20 that either: the dispute has not, within a reasonable time, been  
21 resolved pursuant to the parties' negotiated grievance/arbitra-  
22 tion procedure; or the grievance/arbitration proceedings have not  
23 been fair and regular or have reached a result which is repugnant  
24 to the public policy considerations of the Montana Collective  
25 Bargaining for Public Employees Act.

1  
2 NOTICE: Exceptions to this Recommended Order may be filed  
3 within twenty (20) days of service thereof. If no exceptions are  
4 filed, this Recommended Order shall become the Order of the Board  
5 of Personnel Appeals. Address exceptions to the attention of the  
6 Investigator at the Board of Personnel Appeals, P.O. Box 1728,  
7 Helena, Montana 59624-1728.

8  
9 Dated this 1st day of November, 1991.

10 BOARD OF PERSONNEL APPEALS

11 By: 

John Andrew  
Investigator

12 CERTIFICATE OF MAILING

13 The undersigned hereby certifies that true and correct  
14 copies of the foregoing documents were, this day served upon the  
15 following parties or such parties' attorneys of record by  
16 depositing the same in the U.S. Mail, postage prepaid, and  
17 addressed as follows:

18 William Nachatilo, Superintendent  
19 Butte School District No. 1  
20 111 North Montana Street  
21 Butte, Mt. 59701

22 Lucina Durkin  
23 ATU Local #381  
24 838 Hornet Street  
25 Butte, Mt. 59701

Dated this 1st day of November 1991.

